

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4583 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

MAGANBHAI JHINABHAI PATEL

Versus

STATE OF GUJARAT & ORS.

Appearance:

Shri S.H. Sanjanwalla, Advocate, for the
Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 15/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Surat (respondent No. 2 herein) on 6th June 1987 under sec. 21(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 3 herein) on 26th April 1988 in Appeal No. Surat-117 of 1987 is under challenge in this

petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 2 cancelled the permission granted under sec. 21(1) of the Act with respect to the lands bearing survey Nos. 317, 318, 319, 320 and 327 in all admeasuring 13235 square meters situated at Adajan within the urban agglomeration of Surat (the disputed lands for convenience).

2. The facts giving rise to this petition move in a narrow compass. The petitioner in the company of two more persons, named, Chimanbhai Prabhubhai and Hargovanbhai Prabhubhai, applied for permission under sec. 21(1) of the Act with respect to the disputed lands. By the order passed by respondent No. 2 on 26th May 1980, such permission came to be granted on certain terms and conditions. Its copy together with the schedules annexed thereto is at Annexure A to this petition. It appears that the petitioner was found to have violated several conditions contained in the order at Annexure A to this petition. Thereupon a show-cause notice came to be issued inter alia to the petitioner on 17th October 1986 but communicated on 4th November 1986 under sec. 21(2) of the Act calling upon inter alia the petitioner to show cause why the order at Annexure A to this petition should not be cancelled. A copy of the aforesaid show-cause notice is at Annexure B to this petition. It appears that the petitioner filed his reply thereto on 18th February 1987. Its copy is at Annexure C to this petition. After hearing the party, by his order passed on 6th June 1987 under sec. 21(2) of the Act, respondent No. 2 cancelled the permission granted by the order at Annexure A to this petition. Its copy is at Annexure D to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 3 under sec. 33 of the Act. A copy of the memo of appeal is at Annexure E to this petition. It came to be registered as Appeal No. Surat-117 of 1987. By the order passed on 26th April 1988 in the aforesaid appeal, respondent No. 3 dismissed it. Its copy is at Annexure F to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure D to this petition as affirmed in appeal by the appellate order at Annexure F to this petition.

3. As rightly submitted by learned Advocate Shri Sanjanwalla for the petitioner, the impugned order at Annexure D to this petition can be said to be suffering from the vice of non-application of mind on the part of its author. It transpires from the reply at Annexure C

to this petition that the petitioner raised several contentions before respondent No. 2 in reply to the show-cause notice at Annexure B to this petition. It however appears that in the impugned order at Annexure D to this petition what is done by respondent No. 2 is to summarise such contentions without specifically dealing with them. Besides, that apart, the finding is recorded in the order at Annexure D to this petition that the petitioner raised three bungalows of one storey each by the name of Kanchan Niwas, Manjula Niwas and Sushila Niwas in Plots Nos.22 to 28. The show-cause notice at Annexure B to this petition does not contain any such ground for cancellation of the permission granted by the order at Annexure A to this petition. The petitioner was thus given no opportunity to explain his position with respect to such finding recorded in the impugned order at Annexure D to this petition.

4. It appears that the petitioner was served with another show-cause notice of 8th May 1987. The petitioner has denied its receipt even before the appellate forum and also before this Court. Learned Assistant Government Pleader Shri Sompura for the respondents has kept an official from the office of respondent No. 2 present with the record of the case. On perusal of such record, it is found that the show-cause notice issued on 8th May 1987 was served to the petitioner on 16th May 1987. The petitioner's grievance regarding its non-receipt would thus pale into insignificance. Learned Advocate Shri Sanjanwalla for the petitioner is however right in his submission that even the notice of 8th May 1987 does not mention that the petitioner constructed the aforesaid three bungalows on plots Nos. 22 to 28 in contravention of the terms and conditions of the scheme granted by the order at Annexure A to this petition. In that view of the matter, there is no escape from the conclusion that the petitioner was not given any opportunity to explain his position in that regard.

5. The same can be said about the appellate order at Annexure F to this petition. Respondent No. 3 in the appellate order at Annexure F to this petition has recorded as many as 10 contentions raised on behalf of the petitioner and has dealt with not even half of them. In that view of the matter, the appellate order can also be said to be suffering from the vice of non-application of mind on the part of its author.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure D to this

petition as affirmed in appeal by the appellate order at Annexure F to this petition cannot be sustained in law. It has to be quashed and set aside. The matter deserves to be remanded to respondent No. 2 for restoration of the proceedings to file and for his fresh decision according to law after giving an opportunity of hearing to the petitioner and after applying his mind the contentions that are raised by and on behalf of the petitioner. Learned Advocate Shri Sanjanwalla agrees that no fresh show-cause notice would be issued regarding construction of the aforesaid three bungalows in plots Nos. 22 to 28 as found by respondent No.2 in his impugned order at Annexure D to this petition. It would be open to the petitioner to file his additional reply on or before 15th April 1996 with respect to such finding recorded in the impugned order at Annexure D to this petition without any show-cause notice in that regard. Respondent No.2 will certainly take that reply also into consideration.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No.2 herein) on 6th June 1987 at Annexure D to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 26th April 1988 in Appeal No. Surat-117 of 1987 at Annexure F to this petition is quashed and set aside. The matter is remanded to respondent No. 2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.
